

**ATTACHMENT 4.16(b)(2):      Mediation and Impartial Due Process Procedures**

REVIEW PROCEDURES

(1) GENERAL POLICIES

(A) Any applicant or eligible individual for vocational rehabilitation services, who is dissatisfied with any determination made by a vocational rehabilitation counselor or other VRS representative that affects the provision of vocational rehabilitation services to the applicant or eligible individual, may request a timely review of that determination.

(B) All such requests, whether oral or written, must be made within fifteen (15) calendar days from the date of the determination for which review is requested.

(2) NOTIFICATION REQUIREMENTS

(A) Vocational rehabilitation services shall notify each applicant or eligible individual (or, if appropriate the applicant's or eligible individual's representative) in writing of these review procedures:

(1) at the time an individual applies for vocational rehabilitation services;

(2) at the time an individualized plan for employment for the eligible individual is developed; and

(3) upon reduction, suspension, or termination of the eligible individual's vocational rehabilitation services.

(B) The notice of review procedures must:

(1) inform the applicant or eligible individual of his or her right to request a review of the counselor or agency determination in an impartial due process hearing;

(2) inform the applicant or eligible individual of his or her right, at his or her option, to pursue mediation with respect to the counselor or agency determination;

(3) include a description of the availability of the Client Assistance Program (CAP); and

(4) be provided in writing, supplemented, as applicable, in the native language or appropriate mode of communication consistent with the individual's informed choice.

(3) IMPARTIAL DUE PROCESS HEARING

(A) If the applicant or eligible individual desires a review of a counselor's or agency's determination, the request for review must be made within fifteen (15) calendar days of the counselor or agency determination for which review is being requested.

(B) When requesting a review of a counselor or agency determination, the applicant or eligible individual will be asked to indicate whether or not they want to pursue mediation before a formal administrative hearing is held.

(C) At the time an individual requests review of a counselor or agency determination, an impartial hearing officer will be assigned to preside over the individual's request for review. If an individual indicates that he or she wants to pursue mediation, the impartial hearing officer will set a hearing between thirty (30) days and forty-five (45) days after the request for review was received by Vocational Rehabilitation Services. The hearing will be held unless the Hearing Officer receives a signed mediation agreement from the mediator assigned to the appeal.

(D) If the individual indicated that he/she desired to mediate the dispute, mediation shall be offered to the individual pursuant to the following procedures:

(1) A mediator shall be assigned to mediate the dispute;

(2) The mediator shall schedule mediation sessions in a timely matter in locations that are convenient to the parties.

(3) The individual, or the individual's representative, may submit at any mediation session evidence and information to support the position of the individual.

(4) The individual may be represented by a person of the individual's choice during the mediation process.

(5) If agreement is reached during mediation, the mediator shall set forth the agreement in a written mediation agreement that is signed by both parties. The mediator shall provide a copy of the mediation agreement to the to both parties and to the Impartial Hearing Officer. Any previously scheduled due process hearing shall automatically be canceled.

(6) If no agreement is reached during mediation, the mediator shall notify the Impartial Hearing Officer that no mediation agreement was entered into by the parties. Any previously scheduled due process hearing shall proceed as scheduled.

(7) All discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings. The parties shall sign a confidentiality statement before beginning any mediation.

(E) Due Process Hearings, shall be conducted as follows:

(1) All hearings shall be held within forty-five (45) days after the request for an appeal is received by Vocational Rehabilitation Services, unless either side, for good cause, requests an extension of time.

(2) The individual may submit evidence and information to support the individual's position. The individual may be represented by counsel or other person of the individual's choosing. The individual may examine all evidence, information, and witnesses presented by vocational rehabilitation and its representatives.

(3) The Impartial Hearing Officer will make a decision based upon the State Plan, the Rehabilitation Act, federal and state regulations, and state agency policy; and will issue in writing the Findings of Fact and Conclusions of Law within thirty (30) days after the conclusion of the Due Process Hearing. The Findings of Fact and Conclusions of Law will be sent to the parties and a copy sent to the Deputy Director for Vocational Rehabilitation Services.

(4) Pursuant to Section 102(c)(4)(D)(ii) of the Rehabilitation Act, if either party is dissatisfied with the Impartial Hearing Officer's decision, either party

may ask the Secretary of Family and Social Services Administration to review the Impartial Hearing Officer's decision. Any request to review an Impartial Hearing Officer's decision must be received by the Secretary of Family and Social Services Administration within twenty (20) days after the Impartial Hearing Officer's decision.

(5) When reviewing an Impartial Hearing Officer decision, the Secretary shall provide the parties an opportunity to submit additional evidence and information relevant to a final decision.

(6) The Secretary of Family and Social Services Administration cannot overturn or modify a decision of an Impartial Hearing Officer, or part of a decision that supports the position of the individual, unless the Secretary of Family and Social Services Administration concludes, based on clear and convincing evidence, that the decision of the Impartial Hearing Officer is clearly erroneous on the basis of being contrary to the State plan, the Rehabilitation Act, federal or state regulations, or state policy.

(7) The Secretary of Family and Social Services Administration shall issue, within thirty (30) days after the deadline for the parties to submit additional evidence, Findings and Conclusions of Law which shall be provided to the individual, or the individual's representative, the vocational rehabilitation services counselor and the director of DDARS.

(8) Any party dissatisfied with the decision of the Secretary may file a civil action in an appropriate State or Federal court.

(9) If a party files a civil action challenging a final decision of the Secretary of Family and Social Services Administration, the decision of the Secretary of Family and Social Services shall be implemented pending review by the court.

(4) CONTINUATION OF SERVICES DURING THE REVIEW PROCESS

VRS cannot suspend, reduce, or terminate services being provided to an individual with a disability, including evaluation and assessment services and plan development, during the review process, unless:

(A) the individual with a disability, or the individual's representative, requests; or

(B) such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with a disability, or the individual's representative.

(5) RECORD OF SERVICES DOCUMENTATION REQUIREMENTS

In addition to the copies required under policy (3)(A)-(L), a copy of all requests for review, correspondence, and findings of fact and decisions resulting from the review process must be incorporated in the individual's record of services.